

13-26-1. Short title.

This chapter is known as the "Telephone Fraud Prevention Act."

Enacted by Chapter 154, 1990 General Session

13-26-2. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products. A continuity plan is distinguished from a subscription arrangement by no binding commitment period or purchase amount.

(2) "Division" means the Division of Consumer Protection.

(3) "Fictitious personal name" means a name other than an individual's true name. An "individual's true name" is the name taken at birth unless changed by operation of law or by civil action.

(4) "Material statement" or "material fact" means information that a person of ordinary intelligence or prudence would consider important in deciding whether or not to accept an offer extended through a telephone solicitation.

(5) "Premium" means a gift, bonus, prize, award, certificate, or other document by which a prospective purchaser is given a right, chance, or privilege to purchase or receive goods or services with a stated or represented value of \$25 or more as an inducement to a prospective purchaser to purchase other goods or services.

(6) "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, with the prior express request or consent of the buyer, for a specified period of time at a price dependent on the duration of service and to complement an initial purchase.

(7) (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

(i) a sale or solicitation of goods or services in which:

(A) (I) the seller solicits the sale over the telephone;

(II) the purchaser's agreement to purchase is made over the telephone; and

(III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services;

(B) the solicitor, not exempt under Section 13-26-4, induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser that would not have occurred without the telephone solicitation and inducement by the solicitor;

(C) the seller offers or promises a premium to a prospective purchaser if:

(I) the seller induces the prospective purchaser to initiate a telephone contact with the telephone soliciting business; and

(II) the resulting solicitation meets the requirements of Subsection (7)(a); or

(D) the solicitor solicits a charitable donation involving the exchange of any premium, prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose by an organization that is not otherwise exempt under Subsection 13-26-4(2)(b)(iv); or

(ii) a telephone solicitation as defined in Section 13-25a-102.

(b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not

include a sale or solicitation that occurs solely through an Internet website without the use of a telephone call.

(c) A solicitation of sale or telephone solicitation is considered complete when made, whether or not the person receiving the solicitation agrees to the sale or to make a charitable donation.

(8) "Telephone soliciting business" means a sole proprietorship, partnership, limited liability company, corporation, or other association of individuals engaged in a common effort to conduct telephone solicitations.

(9) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability company, corporation, or other entity that:

- (a) makes a telephone solicitation; or
- (b) causes a telephone solicitation to be made.

Amended by Chapter 152, 2012 General Session

13-26-3. Registration and bond required.

(1) (a) Unless exempt under Section 13-26-4, each telephone soliciting business shall register annually with the division before engaging in telephone solicitations if:

(i) the telephone soliciting business engages in telephone solicitations that:

- (A) originate in Utah; or
- (B) are received in Utah; or

(ii) the telephone soliciting business conducts any business operations in Utah.

(b) The registration form shall designate an agent residing in this state who is authorized by the telephone soliciting business to receive service of process in any action brought by this state or a resident of this state.

(c) If a telephone soliciting business fails to designate an agent to receive service or fails to appoint a successor to the agent:

(i) the business' application for an initial or renewal registration shall be denied; and

(ii) any current registration shall be suspended until an agent is designated.

(d) (i) For purposes of this section only, the registered agent of a telephone soliciting business shall provide the division proof of residency in the state.

(ii) Proof of residency under Subsection (1)(d)(i) may be provided by a valid Utah driver license, valid governmental photo identification issued to a resident of the state, or other verifiable identification indicating residency in the state.

(2) The division may impose an annual registration fee set pursuant to Section 63J-1-504 that may include the cost of the criminal background check described in Subsection (4).

(3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:

(i) a performance bond issued by a surety authorized to transact surety business in this state;

(ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or

(iii) a certificate of deposit held in this state in a depository institution regulated by the Department of Financial Institutions.

(b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales violation of this chapter.

(c) The division may recover from the bond, letter of credit, or certificate of deposit investigative costs, attorney fees, and other costs of collecting and distributing funds under this section and the costs of promoting consumer education, but only if the consumer has first recovered full damages.

(d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of credit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate of deposit shall be:

(i) \$25,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has fewer than 10 employees; or

(ii) \$50,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has 10 or more employees; or

(iii) \$75,000 if the telephone soliciting business or any affiliated person has violated this chapter within three years preceding the date of the application.

(f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.

(4) (a) As used in this Subsection (4), "participant" means an individual with a controlling interest in or an owner, officer, director, member, principal, trustee, general partner, limited partner, manager, sole proprietor, or key employee of a person seeking to register or renew a registration as a telephone soliciting business.

(b) As part of the process to register or renew a registration as a telephone soliciting business, a participant:

(i) may not, within the previous 10 years, have been convicted of a felony;

(ii) may not, within the previous 10 years, have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty; and

(iii) shall submit to the division:

(A) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and

(B) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.

(5) The division may establish by rule the registration requirements for telephone soliciting businesses under the terms of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(6) If information in an application for registration or for renewal of registration as a telephone soliciting business materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the information changes or becomes incorrect

or incomplete, correct the application or submit the correct information to the division in a manner that the division establishes by rule.

(7) The division director may deny or revoke a registration under this section for any violation of this chapter.

Amended by Chapter 124, 2013 General Session

13-26-4. Exemptions from registration.

(1) In any enforcement action initiated by the division, the person claiming an exemption has the burden of proving that the person is entitled to the exemption.

(2) The following are exempt from the requirements of this chapter except for the requirements of Sections 13-26-8 and 13-26-11:

(a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his license;

(b) the solicitation of sales by:

(i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the utility;

(ii) a newspaper of general circulation;

(iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;

(iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of any member, officer, trustee, or serving board member of the organization, or individual, or family member of an individual, holding a position of authority or trust in the organization; and

(v) a person who periodically publishes and delivers a catalog of the solicitor's merchandise to prospective purchasers, if the catalog:

(A) contains the price and a written description or illustration of each item offered for sale;

(B) includes the business address of the solicitor;

(C) includes at least 24 pages of written material and illustrations;

(D) is distributed in more than one state; and

(E) has an annual circulation by mailing of not less than 250,000;

(c) any publicly-traded corporation registered with the Securities and Exchange Commission, or any subsidiary of the corporation;

(d) the solicitation of any depository institution as defined in Section 7-1-103, a subsidiary of a depository institution, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;

(e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;

(f) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:

(i) the person is registered with or temporarily licensed by the commission to conduct that activity under the Commodity Exchange Act; and

(ii) the registration or license has not expired or been suspended or revoked;

(g) the solicitation of a contract for the maintenance or repair of goods

previously purchased from the person:

- (i) who is making the solicitation; or
- (ii) on whose behalf the solicitation is made;
- (h) the solicitation of previous customers of the business on whose behalf the call is made if the person making the call:
 - (i) does not offer any premium in conjunction with a sale or offer;
 - (ii) is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and
 - (iii) is not regularly engaged in telephone sales;
- (i) the solicitation of a sale that is an isolated transaction and not done in the course of a pattern of repeated transactions of a like nature;
- (j) the solicitation of a person by a retail business establishment that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if both of the following occur on a continuing basis:
 - (i) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and
 - (ii) a majority of the seller's business involves the buyer obtaining the products or services at the seller's place of business;
- (k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, subscription, standing order arrangement, or supplement or series arrangement if:
 - (i) the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by sellers in commerce; or
 - (ii) (A) the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and
(B) the consumer retains the right to cancel at any time and receive a full refund for the unused portion; or
 - (l) a telephone marketing service company that provides telemarketing sales services under contract to sellers if:
 - (i) it has been doing business regularly with customers in Utah for at least five years under the same business name and with its principal office in the same location;
 - (ii) at least 75% of its contracts are performed on behalf of persons exempted from registration under this chapter; and
 - (iii) neither the company nor its principals have been enjoined from doing business or subjected to criminal actions for their business activities in this or any other state.

Amended by Chapter 189, 2014 General Session

13-26-5. Right of rescission -- Cancellation.

(1) (a) Except as provided in Subsections (1)(b) and (c), in addition to any right to otherwise revoke an offer, a person making a purchase from a telephone soliciting business required to be registered under this chapter may cancel the sale up to

midnight of the third business day after the receipt of the merchandise or premium, whichever is later, provided the solicitor advises the purchaser of his cancellation rights under this chapter at the time any solicitation is made.

(b) If the solicitor required to be registered under this chapter fails to orally advise a purchaser of the right to cancel under this section at the time of any solicitation, the purchaser's right to cancel shall be extended to 90 days.

(c) If the solicitor required to be registered under this chapter fails to orally advise a purchaser of his true name, telephone number, and complete street address at the time of any solicitation, the purchaser may cancel the sale at any time.

(2) Sales shall be cancelled by mailing a notice of cancellation to the telephone solicitor's correct street address, postage prepaid. If the telephone solicitor provided no correct street address, cancellation can be accomplished by sending a notice of cancellation to the division's offices, postage prepaid.

(3) (a) If a cancellation involves durable goods, as defined by rule, those goods shall be returned to the seller.

(b) If expendable goods are involved, the purchaser shall return any unused portion of those goods.

(c) A reasonable attempt shall be made to return goods to the solicitor's correct street address within seven days of exercising the right to cancel, providing the solicitor has provided the purchaser with the address. If the solicitor has failed to give a correct address, no return is required to qualify for a full refund of the purchase price.

(d) If the purchaser has used any portion of the services or goods purchased, the solicitor or telephone soliciting business shall receive a reasonable allowance for value given. This allowance may be deducted from any refund due the purchaser.

(e) A solicitor shall be jointly and severally liable with the telephone soliciting business for any refund amount due following the cancellation of a sale made by the solicitor.

(4) For the purposes of this section, "business day" does not include Sunday or a federal or state holiday.

Amended by Chapter 189, 1994 General Session

13-26-8. Penalties.

(1) (a) Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractor, who violates this chapter as a first offense is guilty of a class B misdemeanor.

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(d) (i) In addition to other penalties under this Subsection (1), the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.

(ii) For purposes of Subsection (1)(d)(i), each telephone solicitation made in violation of this chapter is a separate violation.

(iii) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

(2) Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractors, who violates any provision of this chapter shall be subject to a civil penalty in a court of competent jurisdiction not exceeding \$2,500 for each unlawful transaction.

Amended by Chapter 124, 2013 General Session

13-26-10. Provisions of chapter not exclusive.

The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

Enacted by Chapter 184, 1991 General Session

13-26-11. Prohibited practices.

- (1) It is unlawful for any solicitor:
- (a) to solicit a prospective purchaser on behalf of a telephone soliciting business that is not registered with the division or exempt from registration under this chapter;
 - (b) to use a fictitious personal name in connection with a telephone solicitation;
 - (c) to make or cause to be made any untrue material statement, or fail to disclose a material fact necessary to make any statement made not misleading, whether in connection with a telephone solicitation or a filing with the division;
 - (d) to make or authorize the making of any misrepresentation about its compliance with this chapter to any prospective or actual purchaser;
 - (e) to fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5; or
 - (f) to fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5 unless the solicitor is exempt under Section 13-26-4.
- (2) It is unlawful for any telephone soliciting business:
- (a) to cause or permit any solicitor to violate any provision of this chapter; or
 - (b) to use inmates in telephone soliciting operations where inmates have access to personal data about an individual sufficient to physically locate or contact that individual, such as names, addresses, telephone numbers, Social Security numbers, credit card information, or physical descriptions.

Amended by Chapter 124, 2013 General Session